

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**<http://www.montgomerycountymd.gov/boa/>**

**Case No. A-6705**

**PETITION OF BETHANY AND KARL SCHREIBER**

**OPINION OF THE BOARD**

(Opinion Adopted June 16, 2021)

(Effective Date of Opinion: June 23, 2021)

Case No. A-6705 is an application for two variances needed for construction of additions to an existing house. The proposed construction of a rear addition requires a variance of 7.58 feet as it is within 17.42 feet of the rear lot line. The required setback is twenty-five (25) feet, in accordance with Section 59.4.4.8.2 of the Zoning Ordinance. In addition, the proposed construction of a two-story garage addition requires a variance of six (6) feet as it is within twenty-four (24) feet of the front lot line. The required setback is thirty (30) feet, in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, June 16, 2021. All participation was done via Microsoft Teams. Petitioner Karl Schreiber participated in support of the requested variance, assisted by architect Robert Black.

Decision of the Board:                      Variances **GRANTED**.

**EVIDENCE PRESENTED**

1. The subject property is Lot 30, Block 8, Kenwood Park Subdivision, located 5880 Marbury Road in Bethesda, Maryland, 20817, in the R-90 Zone. The property is an unusually shaped, four-sided corner lot. It is located on the southwest side of the intersection of Marbury Road and Tanglewood Drive. The property lines abutting these streets meet at a rounded "corner" but are otherwise generally perpendicular to one another. The Site Plan shows that the property is subject to a 30-foot setback along both

streets, and a 25-foot rear setback along the lot line opposite Marbury Road. While the rear lot line is roughly parallel to the front lot line along Marbury Road, that is not the case for the side lot line, which angles sharply away from the intersection and Tanglewood Drive, causing the property to come to a point at its southern corner and resulting in the property have a rear lot line that is much longer than its front lot line along Marbury Road. See Exhibit 4.

2. Petitioners Bethany and Karl Schreiber ("the Petitioners") are proposing to replace an existing carport, a corner of which extends into the front setback along Tanglewood Drive, with a two-story garage addition. A 45 square foot corner of the proposed garage addition would encroach on the setback from Tanglewood Drive. In addition, the Petitioners are proposing to add a one-story mudroom to the rear of their house. The rear face of the mudroom would continue the plane established by an existing rear addition, the right rear (western) corner of which encroaches into the rear setback. The back portion of the proposed mudroom addition would also encroach on the required rear setback. The total area of this encroachment would be approximately 70 square feet. See Exhibits 3 and 4.

3. SDAT indicates that the Petitioners' home was constructed in 1957, and that the Petitioners purchased the subject property in 2012.

4. The Statement of Justification ("Statement") states that the Petitioners are proposing "a one-story mudroom addition with a breezeway that provides a covered connection to the garage while still allowing for exterior views and daylight to the existing kitchen" and a "a two-story attached garage addition in place of the existing nonconforming carport." The Statement notes that "[t]he existing split-level house is sited on a corner lot within the property setbacks in a peculiar way that makes it exceedingly difficult to expand the footprint" and that "[t]he shape of the buildable area in relation to the existing curb cut, nonconforming carport and concrete basement egress stair provides challenges for locating the proposed additions to other locations." See Exhibit 3.

5. The Statement states that the existing carport and rear addition are nonconforming, as follows:

The proposed garage addition is in place of the existing nonconforming carport. The mudroom addition is in line with the existing nonconforming rear addition. See elevation drawings A200 & A201 [BOA Exhibits 5(a)-(d)].

The Statement further states that "[t]he existing nonconforming carport, rear addition and basement egress stair are part of the original structure." See Exhibit 3.

6. The Statement states with respect to the proposed garage addition and mudroom that the "allowable buildable area and building orientation within the setbacks as well as the configuration of the existing split-level home including the location of the ... basement egress stair do not allow for these improvements without a variance." See Exhibit 3. The Statement indicates that the requested variances are the minimum needed to allow the

proposed expansion of the home, noting that "[t]he addition only increases the footprint [of the house] by 267 square feet or 15.3%," and that "[t]he proposed lot coverage is 21.3% which is well under the maximum coverage of 30%." See Exhibit 3. Finally, the Statement states that the grant of the variances will not adversely impact neighboring property owners, as follows:

The proposed garage addition replaces an existing structure. The second floor of the addition is stepped back to articulate the elevation and reduce the overall scale. The architecture replicates the existing form and is like other additions in the neighborhood. The elevation drawings (A200 & A201) [BOA Exhibits 5(a)-(d)] show the extent of the existing carport in relation to the new addition.

The one-story rear addition is connected to the garage with an open-air breezeway. This addition is a continuation of the existing volume with matching roof lines (see perspective 2 on drawing 4/A201).

The proposed additions on the subject property are within scale of the house and compliment the original neighborhood. Adjacent to our subject property, there is new development and additions which are much larger in scale that breaks the rhythm of the neighborhood.

7. At the hearing, Mr. Black testified that the Petitioners are seeking to enclose and modify an existing carport in order to create a garage that meets modern standards, and at the same time are seeking to expand the second floor of their home over the new garage. He testified that the new garage will be connected via a breezeway to the proposed mudroom, which will access the kitchen. Mr. Black testified that it is challenging to expand the existing house because the application of the required setbacks to the property and the positioning of the original house on the property limit what can be done. In response to Board questions, Mr. Black confirmed that the existing carport and rear bump-out extend into the setbacks, and testified that the location of the proposed garage is the least intrusive way to accomplish the Petitioners' goal using the existing curb cut.

8. Mr. Schreiber testified that the variance sign is prominently displayed on the property, and that some neighbors have stopped by to ask the Petitioners what they were doing.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and the evidence of record, the Board finds that the requested variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59.7.3.2.E as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59-7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds that the subject property has a severely angled side lot line which gives the property an unusual shape, with an elongated, acute angle where the rear and side lot lines meet in the property's southern corner. The Board further finds that the application of the required setbacks to the property significantly constrain the property's available buildable envelope on account of the property's unusual shape, and that these circumstances constitute an extraordinary condition peculiar to the subject property, in satisfaction of this element of the variance test. See Exhibits 3 and 4.

*Section 59.7.3.2.E.2.a.ii the proposed development uses an existing legal nonconforming property or structure;*

The Board finds, based on the Statement, the Site Plan, and the testimony of Mr. Black, that the existing carport encroaches on the required front setback along Tanglewood Drive and is nonconforming, and that the existing rear addition encroaches on the required rear lot line setback and is also nonconforming. See Exhibits 3 and 4. The Board further finds that the Petitioners are proposing additions to this existing nonconforming structure, and that nonconforming structure is defined in Section 59.1.4.2 of the Zoning Ordinance as "[a] structure that was lawful when constructed, that no longer conforms to the requirements of the zone in which it is located." Thus the Board finds that the proposed development uses an existing legal nonconforming structure, in satisfaction of this element of the variance test.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds, based on the Statement and SDAT information, that the subject property was developed in 1957, and that the Petitioners purchased the subject property in 2012. Thus the Board finds that the Petitioners are not responsible for the unusual shape of the property or for the nonconformities of the existing house. See Exhibit 3. Accordingly, the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioners, in satisfaction of this element of the variance test.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that without the grant of the requested variances, the Petitioners cannot replace their existing carport with a garage, or construct their proposed mudroom on plane with their existing rear addition, causing them a practical difficulty. The Board further finds, based on the Statement, the Site Plan, and the testimony of Mr. Black, that the requested variance is the minimum needed to allow the proposed construction of a garage addition in the location of the existing nonconforming carport, and to allow the proposed construction of a mudroom that maintains the plane of the home's existing

nonconforming rear addition. In addition, the Board further finds, based on the Statement, that the requested variances are the minimum needed to overcome the constraints placed on the buildable envelope on account of the property's unusual shape, and to allow the proposed expansion of the Petitioners' home. The Board notes, based on the Statement, that even with the proposed additions, the total lot coverage will be only 21.3%, which is well under the maximum coverage of 30%. In light of the foregoing, the Board finds that the requested variances are the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would otherwise impose, and that this element of the variance test is satisfied.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the proposed construction continues the residential use of the home, and thus that the requested variances can be granted without substantial impairment to the intent and integrity of the applicable Bethesda-Chevy Chase Master Plan (1990), in satisfaction of this element of the variance test.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

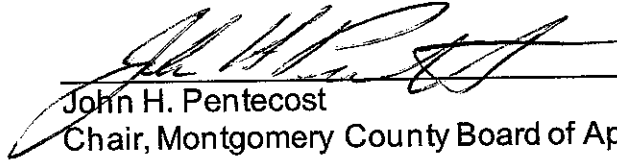
The Board finds, based on the Statement, the Site Plan, and the elevations, that the proposed garage replaces an existing carport, and that the proposed second floor over the garage will be stepped back to articulate the elevation and reduce its massing. The Board further finds that the proposed mudroom is a single story and will continue the rear plane of the home's existing bumpout. See Exhibits 3, 4(b), and 5(a)-(d). In addition, the Board finds, based on the Statement, that the proposed additions on the subject property are within the scale of the house and compliment the original neighborhood. See Exhibit 3. Finally, the Board finds, based on the testimony of Mr. Schreiber, that the variance sign has been conspicuously posted, and that the record contains no objections to the grant of the requested variances or the proposed construction. Thus, the Board finds that granting the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

Accordingly, the requested variances are **granted**, subject to the following conditions:

1. The Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Mary Gonzales, with Bruce Goldensohn, Vice Chair, Richard Melnick, and Caryn Hines in agreement:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 23rd day of June, 2021.



Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59.7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.